



October 17, 2000

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P. O. Box 149104
Austin Texas 78714-9104

OR2000-4025

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 140249.

The Texas Department of Insurance (the "department") received a request for Texas Health Choice review information. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 20A.17(b)(4) of the Insurance Code. We have considered the exception you claim and reviewed the submitted information.

You acknowledge that you have failed to timely submit a request for a decision as required by Government Code section 552.301. Subsections 552.301(a) and (b) provide as follows:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

In this case, you did not request a decision within the ten business day period mandated by section 552.301(b). Because the request for a decision was not timely made, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). However, the assertion of a claimed exception under article 20A.17(b)(4) of the Insurance Code provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You explain that the submitted document is a quality review worksheet. You assert that the document is made confidential by article 20A.17(b)(4) of the Insurance Code. That provision provides as follows:

The commissioner may examine and use the records of a health maintenance organization, including records of a quality of care assurance program and records of a medical peer review committee . . . as necessary to carry out the purposes of this Act, including an enforcement action under Section 20 of this Act. That information is confidential and privileged and is not subject to the open records law, Chapter 552, Government Code, or to subpoena except as necessary for the commissioner to enforce this Act.

Ins. Code art. 20A17(b)(4). We assume from your assertion that the department examined the quality review worksheet to carry out the purposes of the Insurance Act. Thus, we agree that the department must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with article 20A.17(b)(4) of the Insurance Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 140249

Encl. Submitted documents

cc: Ms. Lois Peters
 6020 Calloway
 Fort Worth, Texas 76114
 (w/o enclosures)